

BILL NO. G-95-07-06

ZONING ORDINANCE AMENDMENT NO. G- 20-95

AN ORDINANCE amending the City of
Fort Wayne Zoning Ordinance's Floodplain Regulations.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. That Sections 157.050 through 157.057 of the City of Fort Wayne
Municipal Code (Floodplain District Regulations) are repealed.

SECTION 2. That there is hereby established and adopted a new ordinance
which shall constitute a new subchapter of the City of Fort Wayne Municipal Code, as
follows:

Section: 157.050 Purpose; Intent
 157.051 Definitions
 157.052 Permitted and Prohibited Uses in the Floodplain
 157.053 Nonconforming Uses
 157.054 Standard of Protection
 157.055 Administration
 157.056 Improvement Location Permit
 157.057 Certificate of Compliance
 157.058 Damage Prevention and Flood Protection
 157.059 Building Protection Standards
 157.060 Subdivision and Development Plan Requirements
 157.061 Variances
 157.062 Disclaimer of Liability

157.050 PURPOSE; INTENT.

(A) The purpose of this subchapter is to guide and regulate development in the
floodplain areas under the jurisdiction of the City of Fort Wayne in order to reduce
the potential for: loss of life and property; health and safety hazards; and
extraordinary public expenditures for flood protection and relief. Under the
authority granted to local units of government to control land use within their
jurisdiction, which includes taking into account the effects of flooding, the City of
Fort Wayne hereby adopts the following floodplain management regulations for
the following purposes:

- (1) protect human life and health from the hazards of flooding;
- (2) minimize public and private property damage;
- (3) protect individuals from investing in or purchasing land and structures
which are unsuited for intended purposes because of flood hazards;
- (4) protect new buildings and major improvements to buildings from flood
damage;
- (5) prevent development from increasing flood or drainage hazards to others;
- (6) lessen the burden on the taxpayer for flood control projects, repairs to
flood-damaged public facilities and utilities, and flood rescue and relief
operations;

- (7) maintain property values and a stable tax base by minimizing the potential for creating flood blighted areas;
- (8) provide for public awareness of flooding potential;
- (9) regulate floodplain uses and activities such as filling, storage of materials, and construction of structures and buildings which may cause damaging flood heights and velocities by obstructing flows and reducing water storage capacities; and
- (10) make federally subsidized flood insurance available for structures in the floodplain, and their contents, in the City of Fort Wayne by fulfilling the requirements of the National Flood Insurance Program.

157.051 DEFINITIONS.

For the purposes of this subchapter, the following definitions are adopted; the definitions in section 157.002 apply to this subchapter also.

BASE FLOOD ELEVATION (BFE) - the elevation of the regulatory flood.

BUILDING - see "structure."

CRITICAL FACILITY - any facility with the purpose of aiding and promoting the health, safety, and welfare of the community.

DEVELOPMENT - any change or improvement to land brought about by human activity, including but not limited to:

- (1) renovation, remodeling, construction, reconstruction, or placement of a structure or any addition to a structure. This includes construction such as decks, open porches, gazebos, signs, swimming pools, or fences;
- (2) installation of a manufactured home on a site, preparing a site for a manufactured home or installation of a recreational vehicle on a site for more than 180 days;
- (3) installation of utilities, erection of walls, construction of roads, or similar projects;
- (4) construction of flood control structures and improvements such as levees, dikes, dams, channel improvements, and other similar construction;
- (5) mining, dredging, filling, grading, excavating, or drilling operations;
- (6) construction and/or reconstruction of bridges or culverts;
- (7) outside storage of materials; or
- (8) any other activity that might change the direction, height, or velocity of flood waters.

"Development" does not include activities such as: the maintenance of existing buildings and facilities (such as painting or re-roofing); improvements to structures to correct violations of state or local health, safety, or building code requirements; resurfacing roads; or gardening, plowing, and similar agricultural practices that do

not involve filling, grading, excavating, or the construction of permanent structures.

FEMA - Federal Emergency Management Agency.

FIRM - Flood Insurance Rate Map.

FLOOD - a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, unusual and rapid accumulation, or runoff of surface waters from any source.

FLOOD RESISTANT MATERIALS - building or construction materials which are not subject to damage from exposure to or inundation by floodwater.

FLOODPLAIN - the channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the floodway fringe. For the purposes of this subchapter, the floodplain is the area covered by a "regulatory flood", as shown and delineated on the current FEMA Flood Insurance Rate Map for Allen County and Incorporated Areas.

FLOODPROOFING - a combination of structural provisions, changes or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages to properties, water and sanitary sewer facilities, structures and contents of buildings in a floodplain. Floodproofing must be watertight below the flood protection grade.

FLOODPROOFED BUILDING - a commercial or industrial building designed to exclude floodwater from the interior of that building. All such floodproofing shall be adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood.

FLOOD PROTECTION GRADE - the elevation of the regulatory flood plus two feet at any given location in the Special Flood Hazard Area (SFHA).

FLOODWAY - the channel of a river, stream, or other watercourse and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the peak flood flow of the regulatory flood of any river or stream.

FLOODWAY FRINGE - those portions of the floodplain lying outside the floodway area.

HISTORIC STRUCTURE - any structure that is:

- (1) listed individually on the National Register of Historic Places (a listing maintained by the Department of the Interior) or determined by the United States Secretary of the Interior as eligible for individual listing on the National Register; or
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district; or
- (3) listed on or determined eligible for the National Register of Historic Places as contributing to the significance of a historic district; or
- (4) individually listed on the Indiana Register of Historic Sites and Structures; or

(5) located in an area designated as a local historic district under Chapter 151 of the Fort Wayne Municipal Code; or

(6) individually listed on or designated as a contributing resource in a historic district listed in the Fort Wayne Cultural Resources Survey.

LETTER OF MAP AMENDMENT (LOMA) - an amendment to the currently effective FEMA map that establishes that a property is not located in a Special Flood Hazard Area (SFHA). A LOMA can only be issued by FEMA.

LETTER OF MAP REVISION (LOMR) - an official revision to the currently effective FEMA map. It is issued by FEMA and can change flood zones, floodplain delineations, and flood elevations.

LOWEST FLOOR - the lowest of the following:

- (1) the top of the basement floor;
- (2) the top of the garage floor, if the garage is the lowest level of the building;
- (3) the top of the first floor of buildings elevated on pilings or constructed on a crawl space with permanent openings;
- (4) the top of the floor level of any enclosure below an elevated building where the walls of the enclosure provide any resistance to the flow of flood waters unless as otherwise provided by these regulations; or
- (5) the lowest interior ground level elevation of any structure which does not have a finished floor.

MANUFACTURED HOME - a structure, fabricated in an off-site manufacturing facility, which is transportable in one or more sections and is designed for use as a dwelling with or without a permanent foundation when connected to the required utilities. Such a structure may or may not be built on a permanent chassis. The term "manufactured home" shall not include a "recreational vehicle."

MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before March 30, 1985.

MANUFACTURED HOME PARK OR SUBDIVISION, EXPANSION - the preparation of additional sites by the construction of facilities for servicing the lots on which manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

MANUFACTURED HOME PARK OR SUBDIVISION, NEW - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this subchapter.

MARKET VALUE - the value of a structure as established by a professional appraisal.

NEW CONSTRUCTION - structures for which "start of construction" commenced on or after the effective date of these floodplain management regulations, including any subsequent improvements to such structures.

OBSTRUCTION - a structure, object or other matter in, along, across or projecting into any channel, watercourse, floodplain, river, stream, or flood hazard area which may impede, retard or change the direction of flow of water.

RECREATIONAL VEHICLE - a vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projections, designed to be self-propelled or permanently towable, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

REGULATORY FLOOD - a flood having a one percent probability of being equaled or exceeded in any given year, as calculated by a method and procedure approved by the Indiana Natural Resources Commission and the Federal Emergency Management Agency. A "Regulatory Flood" is also known by the terms "Base Flood" and "100 year flood."

REGULATORY FLOOD PROFILE - a longitudinal profile along the channel of a stream showing the maximum water surface elevations attained by the regulatory flood.

RIVER OR STREAM - all open channels, whether natural, man-made, or modified by man, which carry or discharge water.

SPECIAL FLOOD HAZARD AREA (SFHA) - those lands within the jurisdiction of the City of Fort Wayne that are subject to inundation by the regulatory flood. The SFHAs of the City of Fort Wayne are generally identified as such on the current Flood Insurance Rate Maps of Allen County, Indiana and Incorporated Areas prepared by the Federal Emergency Management Agency.

START OF CONSTRUCTION - the date a building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 60 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of pilings, the construction of columns, or any work beyond excavation or filling; or placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other actual parts of a building, whether or not the alteration affects the external dimensions of the building.

STRUCTURE - any construction that is enclosed by walls and a roof. For the purpose of this subchapter, the term also includes attached and detached decks, open porches, and gazebos 144 square feet or more in size; above-ground gas or liquid storage tanks; a manufactured home; a prefabricated building; or a recreational vehicle to be installed on a site for more than 180 days. It also includes handicap access ramps, except for residential open wood handicap ramps of less than 100 square feet. It does not include other construction that meets the definition of "structure" as set forth in the Definitions section of the Zoning Ordinance, but does not meet this definition or fall under the inclusions listed here.

SUBSTANTIAL DAMAGE - Damage of any origin sustained by a structure, where the cost of restoring the structure to its pre-damaged condition would equal or exceed 40 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT - any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 40 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not include:

- (1) improvements of structures to correct violations of state or local health, safety, or building code requirements, or
- (2) any alteration, reconstruction, addition to, or restoration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

For the purposes of this subchapter, substantial improvement shall include any applicable addition or improvement made to a floodway fringe building or property since March 30, 1985.

WATERSHED - an area which drains to a single point. In a natural basin, this is the area contributing flow to a given place or stream.

ZONE A - shaded areas on the Flood Insurance Rate Map where no base flood elevation has been determined.

ZONE AE - shaded areas of the Flood Insurance Rate Map where base flood elevations have been determined.

ZONE AH - shaded areas on the Flood Insurance Rate Map depicting flood depths of one to three feet (usually areas of ponding) and where base flood elevations have been determined.

ZONE AO - shaded areas on the Flood Insurance Rate Map depicting flood depths of one to three feet (usually sheet flow on sloping terrain) where average depths have been determined.

ZONING DISTRICT - portions of the territory within the jurisdiction on the City of Fort Wayne Plan Commission shown on zoning maps for the City of Fort Wayne to which a uniform set of regulations apply. These regulations permit or prohibit certain land uses per district, while also prescribing certain yard, height, and other dimensional requirements.

157.052 PERMITTED AND PROHIBITED USES IN THE FLOODPLAIN

(A) **FLOODWAY** - The purpose of this section is to guide development away from areas identified as floodway. The floodway is not to be considered a zoning district. The floodway is identified as such by the Federal Emergency Management Agency on the current Allen County and Incorporated Areas Flood Insurance Study and Flood Insurance Rate Maps. These maps, along with any subsequent revisions, are hereby adopted by reference and made a part of this section.

(1) **Permitted uses.** The following uses shall be permitted, excluding any enclosed structures, if the use is permitted by the zoning district in which the property is located:

- (a) agricultural uses;
- (b) wildlife areas, nature preserves, forests, and wetlands;
- (c) parks and recreational uses, such as golf courses and driving ranges, and play areas, provided that no structures or fill will be located within the floodway;
- (d) public and quasi-public utility collection and/or transmission lines, pipes, cables, and the like;
- (e) public transportation facilities, such as roads, streets, and bridges, which are located in public rights-of-way;
- (f) public works projects for flood control improvements such as levees, dikes, floodwalls, and dams;
- (g) private transportation facilities such as roads, bridges, or driveways which are necessary to access private property, and parking lots or parking areas.

Any proposed use which requires a permit from the Indiana Department of Natural Resources shall also be subject to the requirements and conditions of that review and approval process.

(2) **Prohibited uses.**

Any non-permitted encroachments, including structures and fill, except the fill needed for public transportation facilities, utility collection or transmission lines, public flood control improvement projects, or fill approved as part of the Department of Natural Resources review of an application for other work within a floodway.

(B) FLOODWAY FRINGE. The purpose of this section is to regulate and minimize development in areas subject to potential flooding which are outside of an identified floodway. The floodway fringe is not to be considered a zoning district. The floodway fringe is that area identified by the Federal Emergency Management Agency on the current Allen County and Incorporated Areas Flood Insurance Study and Flood Insurance Rate Maps as outside of the floodway, but subject to inundation by the regulatory flood.

(1) Permitted uses.

- (a) All uses permitted in the floodway, provided the use is permitted by the zoning district in which the property is located.
- (b) All structures permitted in the applicable zoning district, which meet all applicable requirements of the Zoning Ordinance, provided the structure also meets all applicable damage prevention, flood protection, and building protection standards of this subchapter.
- (c) Accessory uses and structures permitted in the applicable zoning district, which meet all applicable requirements of the Zoning Ordinance, provided any accessory structure also meets all applicable damage prevention, flood protection, and building protection standards of this subchapter.

(2) Prohibited uses.

Fill placed for any purpose other than for: public transportation facilities; utility collection or transmission lines; public flood control improvement projects; compensatory storage as permitted in Section 152.058; or approved structures as permitted above.

157.053 NONCONFORMING STRUCTURES AND USES

Any building, structure, or use that does not conform to this subchapter is a nonconforming structure or use. Any legal nonconforming structure which is not in the floodway may be enlarged or improved at the existing grade and floor elevations on a one-time basis only, provided the addition or improvement does not constitute substantial improvement. For the purposes of this subchapter and determining whether the one-time exclusion has been used, substantial improvement shall be calculated based on any additions and/or improvements made to any given floodway fringe property since March 30, 1985. For any proposed addition or improvement which constitutes substantial improvement, or is proposed after the one-time exclusion has been used, the addition or improvement shall conform to the building protection standards in Section 157.059.

157.054 STANDARD OF PROTECTION.

This subchapter's protection standard is the regulatory flood. Any reference in this subchapter to the Flood Insurance Rate Map, or FIRM, refers to the Flood Insurance Rate Map for Allen County and Incorporated Areas dated February 16, 1995. These maps, along with any subsequent revisions and/or updates, are hereby adopted by reference and made a part of this subchapter. The best available regulatory flood data is listed below. If a party disagrees with the best available data, the party needs to replace the existing data with data based on a detailed engineering study and submit it

to the Department of Natural Resources for review and approval.

- (A) The regulatory flood elevation for the floodplain of all watercourses shall be as delineated on the flood profiles in the current Flood Insurance Study of Allen County and Incorporated Areas prepared by the Federal Emergency Management Agency, and as shown on the current Flood Insurance Rate Maps of Allen County and Incorporated Areas.
- (B) The regulatory flood elevation for each SFHA delineated as an "AH Zone" or "AO Zone" shall be that elevation (or depth) delineated on the current Flood Insurance Rate Maps of Allen County and Incorporated Areas.
- (C) The regulatory Flood Elevation for each SFHA delineated as an "A Zone" on the current Flood Insurance Rate Maps of Allen County and Incorporated Areas shall be according to the best available data as provided by the Department of Natural Resources.

157.055 ADMINISTRATION.

The Zoning Enforcement Officer shall ensure compliance with all provisions of this subchapter. In doing so, the Zoning Enforcement Officer shall perform the following duties:

- (A) obtain the "as built" elevation (in relation to mean sea level) of the lowest floor of all new or substantially improved structures in the floodplain; or
- (B) obtain, for all structures that have been floodproofed (whether or not such structures include a basement), the elevation (in relation to mean sea level) to which the structure was floodproofed;
- (C) maintain a record of all such information;
- (D) ensure that all new development proposals requiring review under the terms of this subchapter are reviewed by persons with the necessary technical expertise to correctly apply the requirements of this subchapter. If necessary, the Zoning Enforcement Officer shall rely on other appropriate City Departments for that review;
- (E) require any reports or technical data that are necessary to ensure compliance;
- (F) place conditions on any Improvement Location Permit to ensure compliance with the intent, purpose, and regulations of this subchapter, or any similar applicable regulation set forth by a state or federal agency;
- (G) maintain copies and/or a record of any Improvement Location Permit issued within the floodplain, along with any applicable supporting data as needed to document compliance with the requirements of this subchapter;
- (H) provide information and assistance to citizens upon request about permit procedures and floodplain construction techniques;
- (I) maintain for public inspection and furnish upon request the following information: regulatory flood data, FIRM maps, Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits and letters of recommendation, federal permit documents, and "as built" elevations and floodproofing data for all structures constructed subject to this ordinance; and
- (J) notify any affected adjacent communities and the State Coordinating Office prior to any City initiated substantial alteration or relocation of a watercourse which lies within a SFHA, and submit copies of such notifications to FEMA.

157.056 IMPROVEMENT LOCATION PERMIT.

No construction or development which requires an Improvement Location Permit according to the terms of this subchapter shall commence within a floodplain prior to the issuance of an Improvement Location Permit from the Zoning Enforcement Officer. The Zoning Enforcement Officer shall not issue an Improvement Location Permit if the proposed use, structure, site work, or development does not meet the applicable requirements of this subchapter.

(A) Any use permitted within the floodway or the floodway fringe which does not involve the construction of structures shall not require an improvement location permit. This shall include but not be limited to:

- (1) agricultural uses;
- (2) wildlife areas, nature preserves, forests and wetlands;
- (3) public parks and recreational uses, such as golf courses and driving ranges, and play areas;
- (4) public and quasi-public utility collection and/or transmission lines, pipes, cables, and the like;
- (5) public transportation facilities such as roads, streets, and bridges which are located in public rights-of-way;
- (6) public works projects for flood control improvements such as levees, dikes, floodwalls, and dams;
- (7) private transportation facilities such as roads, bridges, or driveways which are necessary to access private property;
- (8) parking lots or parking areas; however, any parking lot or parking area proposed to be located within the floodway must be reviewed and approved by the Department of Natural Resources prior to the issuance of a City parking lot permit.

However, these uses shall still be subject to review as necessary to determine compliance with the applicable provisions of this subchapter.

(B) Upon receipt of an application for an Improvement Location Permit, the Zoning Enforcement Officer shall determine if the site is located within an identified floodway, floodway fringe, or within the floodplain where the limits of the floodway have not yet been determined. If necessary, the Zoning Enforcement Officer may route the application to other appropriate City Departments for assistance in this determination.

(1) If the site is located within an identified floodway, the Zoning Enforcement Officer shall inform the applicant that the permit cannot be issued, unless the request is for a use or development permitted under Section 157.052. In that instance, prior to the issuance of the Improvement Location Permit, the applicant must furnish a copy of any applicable Natural Resources Commission construction permit required by IC 13-2-22.

(2) If the site is located in an identified floodway fringe, the Zoning Enforcement Officer may issue an Improvement Location Permit provided there is compliance with the applicable provisions of Sections 157.052, 157.058, and 157.059 of this subchapter.

(3) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined (shown as Zone A on the Flood Insurance Rate Map), the Zoning Enforcement Officer shall require the applicant to forward plans and specifications to the Department of Natural Resources, requesting a review and letter of recommendation.

(a) If the review indicates the site is in the floodway, the Zoning

Enforcement Officer shall not issue an Improvement Location Permit, unless the request is for a use or development permitted under Section 157.052. In that instance, prior to the issuance of the Improvement Location Permit, the applicant must furnish a copy of any applicable Natural Resources Commission construction permit required by IC 13-2-22.

(b) If the review indicates the site is in the floodway fringe, the Improvement Location Permit may be issued provided there is compliance with the applicable provisions of Sections 157.052, 157.058, and 157.059 of this subchapter.

(c) If the review indicates the upstream drainage area is less than one square mile, an engineering study of the site shall be completed by the applicant and submitted to the Zoning Enforcement Officer. A determination shall then be made by the Zoning Enforcement Officer with assistance if needed by other appropriate City Departments, or the Allen County Surveyor's office, as to whether the site is in the floodway or floodway fringe. No permit shall be issued by the Zoning Enforcement Officer if the site is within the floodway, unless the request is for a use or development permitted under Section 157.052. In that instance, prior to the issuance of the Improvement Location Permit, the applicant must furnish a copy of any applicable Natural Resources Commission construction permit required by IC 13-2-22. If the site is in the floodway fringe, the Improvement Location Permit may be issued provided there is compliance with the applicable provisions of Sections 157.052, 157.058, and 157.059 of this subchapter.

(C) The application for an Improvement Location Permit shall be accompanied by the following:

- (1) a plan showing the location of existing and proposed structures, and existing and proposed land grades on the site;
- (2) the proposed elevation of the top of the lowest floor (including basement) of all proposed development. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD) or North American Vertical Datum (NAVD). In either case, the conversion formula should be included;
- (3) a plan showing the location of existing and proposed structures in relation to any stream, drain, ditch, or waterway; and
- (4) any additional information which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this subchapter.

(D) After the Zoning Enforcement Officer has determined that a requested Improvement Location Permit can be issued for any structure in the floodway fringe, the permit shall be issued for the construction of the foundation and lowest floor only. Prior to the Zoning Enforcement Officer issuing a release for the remaining construction, the applicant shall submit a completed Elevation Certificate showing the elevation of the lowest floor. The Zoning Enforcement Officer shall maintain a record of all submitted Elevation Certificates.

157.057 CERTIFICATE OF COMPLIANCE

No Certificate of Compliance shall be issued by the Zoning Enforcement Officer unless it has been confirmed the structure has been built in compliance with the terms of this subchapter. The Zoning Enforcement Officer may require the applicant to submit any information which may be needed to confirm compliance.

157.058 DAMAGE PREVENTION AND FLOOD PROTECTION.

No development shall be allowed in the floodplain which creates a damaging or potentially damaging increase in flood heights or velocity, or a threat to public health and safety.

(A) Within the floodway identified on the Flood Insurance Rate Map, the following standards shall apply:

(1) no development shall be allowed which acting alone or in combination with existing or future development, will cause any increase in the elevation of the regulatory flood or unduly restrict the capacity of the floodway; and

(2) for all public projects involving channel modifications or fill (including levees) that affect flood heights, the City shall submit a request to the Federal Emergency Management Agency to revise the regulatory flood data and applicable FIRM as necessary.

(B) Within the floodway fringe identified on the Flood Insurance Rate Map, the following standards shall apply:

(1) structures shall be constructed as far from the floodway as possible, provided that all applicable building setback and separation requirements are maintained, unless it is demonstrated that an alternative location would have less of an impact on the floodplain due to a decreased need for fill and/or excavation;

(2) the total cumulative effect of the proposed development, when combined with all other existing development, shall not increase the regulatory flood elevation nor increase the potential for flood damages;

(3) fill material taken from within the floodplain shall offset the fill needed for an approved building project or other permitted development so the water storage capacity of the floodplain is not diminished; excavation of the fill shall take place in the same immediate watershed in which the building site or development is located; an excavated area within the floodplain shall provide for true storage of flood water, and shall not be subject to ponding when not inundated by flood water; and the fill shall not obstruct a drainage way leading to the floodplain. The compensatory storage portions of these fill requirements may be waived by the Zoning Enforcement Officer for approved public works projects for flood control improvements and public transportation projects such as roads, streets, and bridges;

(4) fill shall be of a material deemed stable enough to remain firm and in place during periods of flooding. Runoff and drainage protection shall be provided as necessary to adjacent property owners;

(5) for all permitted projects except for public transportation facilities, public utility collection or transmission lines, or public flood control improvement projects, plans depicting the area to be excavated and filled according to paragraph (3) above shall be submitted by the applicant prior to the issuance of the Improvement Location Permit for the use, structure, or development. Once site work is complete, but prior to the actual start of construction, the applicant shall provide to the Zoning Enforcement Officer a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this subchapter;

(6) floodway fringe development which does not include structures as defined and included in this subchapter, such as signs, fences, open wooden residential handicap ramps of less than 100 square feet, decks and open porches of less than 144 square feet, in-ground swimming pools, and other permitted accessory construction and/or development shall be allowed if:

- (a) constructed and/or located on the site so as to avoid major damage by flood and minimize obstructions to the flow of floodwater; and
 - (b) firmly anchored to prevent flotation.
- (C) Within the floodplain the following public health and safety standards shall apply to protect the community from nuisances and hazards:
- (1) no development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the flood protection grade, unless such materials are stored in a floodproofed storage tank or building constructed according to the requirements of Section 157.059 of this subchapter;
 - (2) new and replacement sanitary sewer lines and on-site waste disposal systems may be permitted providing all manholes or other above ground openings are located above the flood protection grade, or those which are located below the flood protection grade are watertight;
 - (3) outside storage of materials and equipment shall be permitted if not subject to major damage by flood and firmly anchored to prevent flotation (if applicable); or readily portable to another location outside the floodplain in the event of a flood. All proposed above-ground storage tanks must either be elevated above the flood protection grade, or floodproofed to the flood protection grade. All storage tanks must also be firmly anchored to prevent flotation.

157.059 BUILDING PROTECTION STANDARDS.

In addition to the damage prevention requirements of Section 157.058, all buildings to be located in the SFHA shall be protected from flood damage below the flood protection grade.

- (A) This building protection requirement applies to the following situations:
- (1) construction, reconstruction or placement of a new primary structure;
 - (2) construction or reconstruction of an addition to an existing building, that constitutes substantial improvement, or is proposed for a building after the one-time exclusion noted in Section 157.053 has been used for that building;
 - (3) structural alterations and/or renovations made to an existing building, that constitute substantial improvement; or are proposed for a building after the one-time exclusion noted in Section 157.053 has been used for that building;
 - (4) construction, reconstruction, or placement of a permitted deck, open porch, gazebo, or detached accessory structure over 144 square feet in size;
 - (5) reconstruction or repairs made to a building that experienced substantial damage. Any structure receiving substantial damage must comply with all applicable requirements of this subchapter, regardless of the level of repairs actually made to the structure;
 - (6) installing a manufactured home on a new site or a new manufactured home on an existing site. This subchapter does not apply to returning an existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage or installing/replacing a manufactured or mobile home on an existing site within a legal nonconforming mobile or manufactured home park or subdivision; and

- (7) installing a travel trailer or recreational vehicle on a site for more than 180 days.

(B) The building protection standards may be met by one of the following methods. The Zoning Enforcement Officer shall maintain a record of compliance with these building protection standards as required in Section 157.056 of this subchapter.

- (1) A structure or addition to a structure may be constructed on a site within the floodway fringe on permanent fill in accordance with the applicable portions of Section 157.058 (B), and the following:
- (a) the fill shall be placed in layers no greater than one foot deep before compacting to 95% dry density obtainable according to the Standard Proctor Test method;
 - (b) the fill shall extend at least ten feet beyond the foundation of the building or to the property line, whichever is less, before sloping below the flood protection grade;
 - (c) the fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, bulkheading, or other acceptable method. If vegetative cover is used, the slopes shall be no steeper than 3 to 1 (horizontal to vertical);
 - (d) the fill shall not adversely affect the flow of surface drainage from or onto any adjacent properties;
 - (e) the top of the lowest floor of the structure or addition shall be at or above the flood protection grade.

The applicant shall submit a plan, certified by a registered Land Surveyor, showing how items 1(b) and 1(d) above will be met prior to the issuance of the Improvement Location Permit for the project. The applicant shall submit compaction test results after the fill has been placed. Compliance with the remaining applicable items listed under section (B)(1) above shall be verified as necessary after the fill has been placed, prior to the issuance of the Certificate of Compliance for the project. If necessary, the Zoning Enforcement Officer may rely on other appropriate City departments for any required assistance in documenting compliance with the fill requirements.

- (2) A structure or addition to a structure may be elevated in accordance with the following:
- (a) the structure or addition shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:
 - (1) the walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two openings (in addition to doorways and windows) having a total area of one (1) square foot for every two (2) square feet of enclosed area subject to flooding. The bottom of all such openings shall be no higher than one (1) foot above grade; and
 - (2) any enclosure below the elevated floor is only used for storage and building access;
 - (b) the foundation and supporting members shall be anchored and aligned in relation to flood flows and adjoining structures so as to minimize exposure to known hydrodynamic forces such as current, waves, ice, and floating debris;

- (c) all areas below the flood protection grade shall be constructed of materials resistant to flood damage, including but not limited to poured concrete or treated lumber. The top of the lowest floor and all electrical, heating, ventilating, plumbing, and air conditioning equipment and utility meters shall be located at or above the flood protection grade. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the flood protection grade.
- (3) Manufactured homes to be installed or substantially improved on a site must meet one of the following anchoring requirements:
- (a) the manufactured home shall be elevated on a permanent foundation so that the lowest floor shall be at or above the flood protection grade and securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site:
- (1) outside a manufactured home park or subdivision;
- (2) in a new manufactured home park or subdivision;
- (3) in an expansion to an existing manufactured home park or subdivision; or
- (4) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.
- (b) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.
- (4) Recreational vehicles placed on a site shall either:
- (a) be on the site for less than 180 consecutive days; or
- (b) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and having no permanently attached additions); or
- (c) meet the requirements for "manufactured homes" in Section 157.059(B)(4).
- (5) A non-residential structure or addition(s) to a structure may be floodproofed to the flood protection grade (in lieu of elevating) if done in accordance with the following:
- (a) a registered professional engineer or architect shall certify that the portion of the structure and attendant utility facilities located below the flood protection grade have been designed to be watertight and capable of resisting the effects of the regulatory flood; the building design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice; and
- (b) floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(6) Any detached accessory structure which receives approval of a flood protection grade elevation waiver from the Board of Zoning Appeals shall also meet the following building protection standards, as required by the Indiana Department of Natural Resources:

- (a) the structure shall be designed with an unfinished interior and constructed of flood resistant materials;
- (b) any proposed utilities shall be located above the base flood elevation, or shall be floodproofed; and
- (c) the structure shall be less than 500 square feet in size and used only for personal storage; and
- (d) the structure shall meet the 44 CFR §60.3(c)(5) openings requirement.

157.060 SUBDIVISION AND DEVELOPMENT PLAN REQUIREMENTS

(A) As part of its consideration of primary approval of a development plan or subdivision plat, the Plan Commission or Plat Committee (as applicable) shall review the proposed subdivision and/or development plan to determine whether any part of the proposed development lies in a floodplain. The Plan Commission staff may route the proposed plans to other appropriate City departments to assist in this review. If the subdivision or development is located in an Zone A, the developer shall forward plans and materials to the Indiana Department of Natural Resources for review and comment. If the site contains areas within the floodplain, those portions within the floodplain will be subject to the permitted use and other applicable requirements of this subchapter. Any proposed subdivision shall comply with the requirements of Section 155.026 of the City Subdivision Control Ordinance. All proposed plats and development plans shall also comply with the following:

- (1) no structures or fill shall be located or placed within the floodway, except for fill as permitted in Section 157.052;
- (2) development activities in the floodplain shall be carried out in a manner which is consistent with the need to reduce flood damages;
- (3) all public utilities and facilities, such as sewer, gas, electrical, and water systems shall be located and constructed to minimize or eliminate flood damage; and
- (4) adequate drainage shall be provided so as to reduce exposure to flood hazards.

(B) Developers shall show the regulatory flood elevation and any applicable flood protection grades on all secondary development plans and subdivision plats containing lands identified as lying within the floodplain prior to submitting the plans or plats for approval by the Plan Commission or Plat Committee.

(C) All owners of manufactured home parks or manufactured home subdivisions located within a floodplain identified as Zone A on the Flood Insurance Rate Map must develop an evacuation plan for those lots which are located in Zone A. The plan must be approved by the Allen County Office of Emergency Preparedness. A copy of the plan shall also be filed with the Plan Commission.

157.061 VARIANCES

(A) The Board of Zoning Appeals may issue a variance from the provisions of this subchapter provided the applicant demonstrates that:

- (1) there exists a sufficient cause for the requested variance;
 - (2) the strict application of the terms of this subchapter will constitute an unnecessary and exceptional hardship to the property; and
 - (3) the granting of the requested variance will not be injurious to the public health, safety and welfare, in that the approval will not appreciably increase flood heights, create significant additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (B) The Board of Zoning Appeals may issue a variance from the provisions of this subchapter subject to the following standards and conditions:
- (1) all variance requests are subject to a public hearing, with notice provided as required in IC 5-3-1;
 - (2) no variance shall be granted for a use or structure in the floodway unless the proposed use or structure has been approved by the Indiana Department of Natural Resources (if necessary), and the applicant can submit evidence showing that the proposed use or structure will not result in an increased flood elevation or an increase in potential flood damages;
 - (3) variances from the Building Protection Standards of Section 157.059 should only be granted for a new structure when it is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade; or, in the case of a request for an elevation waiver for a detached accessory structure, if it meets the additional requirements listed in Section 157.059(b)(7);
 - (4) all variances shall not affect the use and value of the area adjacent to the property in a substantially adverse manner by giving the minimum relief necessary and giving the maximum practical flood protection to the proposed construction; and
 - (5) the Board shall require in each case a written waiver of liability from any flood damage due to a flood larger than the regulatory flood, on a form approved by the Board, from the owners, or developers if the developers are different from the owners. The Board shall also issue a written notice to the recipient of a variance that the proposed construction will be subject to increased risks to life and property and could require payment of increased flood insurance premiums. This notice shall be recorded by the applicant in the Allen County Recorder's office.

As part of the consideration of any floodplain variance request, the BZA staff may route the request to the Indiana Department of Natural Resources for review and comment.

157.062 DISCLAIMER OF LIABILITY.


- (A) The degree of flood protection required by this subchapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice or debris jams.
- (B) This subchapter does not imply that areas outside the floodplain district as defined herein, will be free from flooding or flood damages.
- (C) This subchapter does not create liability on the part of the community, the Indiana Department of Natural Resources, the City of Fort Wayne, the Board of Zoning Appeals, the Plan Commission or any elected or

appointed official or employee thereof for any flood damages that result from reliance on this subchapter or any administrative decision lawfully made thereunder.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.


Councilmember

APPROVED AS TO FORM AND LEGALITY:


J. TIMOTHY MCCAULAY, CITY ATTORNEY

Read the first time in full and on motion by Ravine,
and duly adopted, read the second time by title and referred to the
Committee on Annexation (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne, Indiana, on _____, 19____, the _____ day of _____
M., E.S.T.

DATED: 7-11-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Ravine,
and duly adopted, placed on its passage. PASSED LOST
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY	<u>✓</u>			
EDMONDS				<u>✓</u>
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO				<u>✓</u>

DATED: 7-25-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) _____ (APPROPRIATION) _____ (GENERAL)
(SPECIAL) _____ (ZONING) _____ ORDINANCE _____ RESOLUTION NO. 12-20-95
on the 25th day of July, 1995

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Don J. Schmitter
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 26th day of July, 1995,
at the hour of 3:00 o'clock P., M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 28th day of July,
1995, at the hour of 4:00 o'clock P., M., E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

BILL NO. 6-95-07-06

REPORT OF THE COMMITTEE ON
REGULATIONS
CLETUS R. EDMONDS - REBECCA J. RAVINE - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending the City of
Fort Wayne Zoning Ordinance's Floodplain Regulations

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Rebecca Ravine

Sandra E. Kennedy

Cletus R. Edmonds

Clifford J. Brown

John J. Brown

John J. Brown

Cletus R. Edmonds

DATED: 7-25-95

Sandra E. Kennedy
City Clerk

ORIGINAL

ORIGINAL

#594

DIGEST SHEET

TITLE OF ORDINANCE Amendment to the Zoning Ordinance Flood Plain Regulations

DEPARTMENT REQUESTING ORDINANCE Land Use Management - C&ED

SYNOPSIS OF ORDINANCE This is an amendment which will replace the current Floodplain Regulations section with a new section. The new section has been reorganized and updated based on the State model floodplain ordinance and Allen County's floodplain regulations. Current restrictions and procedures will remain substantially the same as under the existing Floodplain Regulations.

9-95-07-06

EFFECT OF PASSAGE Passage of the amendment will allow continued participation by the City in the Federal National Flood Insurance Program.

EFFECT OF NON-PASSAGE If the ordinance is not adopted prior to August 2, 1995, the City could be suspended from the National Flood Insurance Program.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) Participation in the N.F.I.P. and C.R.S. makes discounted flood insurance available to City residents.

(ASSIGN TO COMMITTEE) Regulations